

# Indiana Rules of Court Rules of Evidence

Adopted Effective January 1, 1994

*Including Amendments Received Through December 2001*

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## ARTICLE I. GENERAL PROVISIONS

### Rule

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## ARTICLE I. GENERAL PROVISIONS

### **Rule 101. Scope**

These rules govern proceedings in the courts of this State to the extent and with the exceptions stated in this rule.

**(a) General Applicability.** These rules apply in all proceedings in the courts of the State of Indiana except as otherwise required by the Constitution of the United States or Indiana, by the provisions of this rule, or by other rules promulgated by the Indiana Supreme Court. If these rules do not cover a specific evidence issue, common or statutory law shall apply. The word "judge" in these rules includes referees, commissioners and magistrates.

**(b) Rules of Privilege.** The rules and laws with respect to privileges apply at all stages of all actions, cases, and proceedings.

**(c) Rules Inapplicable.** The rules, other than those with respect to privileges, do not apply in the following situations:

- (1) *Preliminary questions of fact.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).
- (2) *Miscellaneous proceedings.* Proceedings relating to extradition, sentencing, probation, or parole; issuance of criminal summonses, or of warrants for arrest or search, preliminary juvenile matters, direct contempt, bail hearings, small claims, and grand jury proceedings.

*Adopted effective Jan. 1, 1994.*

**Rule 102. Purpose and Construction**

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

*Adopted effective Jan. 1, 1994.*

**Rule 103. Rulings on Evidence**

**(a) Effect of Erroneous Ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by a proper offer of proof, or was apparent from the context within which questions were asked.

**(b) Record of Offer and Ruling.** The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

**(c) Hearing of Jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

**(d) Fundamental Error.** Nothing in this rule precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court.

*Adopted effective Jan. 1, 1994.*

**Rule 104. Preliminary Questions**

**(a) Questions of Admissibility Generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of subdivision (b). In making its determination, it is not bound by the Rules of Evidence, except those with respect to privileges.

**(b) Relevancy Conditioned on Fact.** When the relevancy of evidence depends upon the fulfillment of a condition of fact, the Court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

**(c) Hearing of Jury.** Hearings on the admissibility of confessions shall in all cases be conducted out of the presence and hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

**(d) Testimony by Accused.** The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

**(e) Weight and Credibility.** This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

*Adopted effective Jan. 1, 1994.*

**Rule 105. Limited Admissibility**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and admonish the jury accordingly.

*Adopted effective Jan. 1, 1994.*

**Rule 106. Remainder of or Related Writing or Recorded Statements**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require at that time the introduction of any other part or any other writing or recorded statement which in fairness ought to be considered contemporaneously with it.

*Adopted effective Jan. 1, 1994.*

**ARTICLE II. JUDICIAL NOTICE****Rule 201. Judicial Notice**

**(a) Kinds of Facts.** A court may take judicial notice of a fact. A judicially-noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

**(b) Kinds of Laws.** A court may take judicial notice of law. Law includes (1) the decisional, constitutional, and public statutory law, (2) rules of court, (3) published regulations of governmental agencies, (4) codified ordinances of municipalities, and (5) laws of other governmental subdivisions of the United States or of any state, territory or other jurisdiction of the United States.

**(c) When Discretionary.** A court may take judicial notice, whether requested or not.

**(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

**(e) Opportunity to Be Heard.** A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

**(f) Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.

**(g) Instructing the Jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

*Adopted effective Jan. 1, 1994.*

**ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS****Rule****301 Presumptions in Civil Actions and Proceedings****Rule 301. Presumptions in Civil Actions and Proceedings**

In all civil actions and proceedings not otherwise provided for by constitution, statute, judicial decision or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. A presumption shall have continuing effect even though contrary evidence is received.

*Adopted effective Jan. 1, 1994.*

## ARTICLE IV. RELEVANCY AND ITS LIMITS

### Rule

- 401 Definition of "Relevant Evidence"
- 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible
- 403 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay
- 404 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes
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### **Rule 401. Definition of "Relevant Evidence"**

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

*Adopted effective Jan. 1, 1994.*

### **Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

All relevant evidence is admissible, except as otherwise provided by the United States or Indiana constitutions, by statute not in conflict with these rules, by these rules or by other rules applicable in the courts of this State. Evidence which is not relevant is not admissible.

*Adopted effective Jan. 1, 1994.*

### **Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay**

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.

*Adopted effective Jan. 1, 1994.*

### **Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes**

**(a) Character Evidence Generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

- (1) *Character of accused.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;
- (2) *Character of victim.* Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
- (3) *Character of witness.* Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

**(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible

for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

*Adopted effective Jan. 1, 1994.*

#### **Rule 405. Methods of Proving Character**

**(a) Reputation or Opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. Upon reasonable pre-trial notice by the accused of the intention to offer character evidence, the prosecution in a criminal case shall provide the accused with any relevant specific instances of conduct to be used in cross-examination.

**(b) Specific Instances of Conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

*Adopted effective Jan. 1, 1994.*

#### **Rule 406. Habit; Routine Practice**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

*Adopted effective Jan. 1, 1994.*

#### **Rule 407. Subsequent Remedial Measures**

When after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

*Adopted effective Jan. 1, 1994.*

#### **Rule 408. Compromise and Offers to Compromise**

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.

*Adopted effective Jan. 1, 1994.*

#### **Rule 409. Payment of Medical and Similar Expenses**

Evidence of paying or furnishing, or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury, or damage to property is not admissible to prove liability for such injury or damages.

*Adopted effective Jan. 1, 1994.*

**Rule 410. Withdrawn Pleas and Offers**

Evidence of a plea of guilty or admission of the charge which was later withdrawn, or a plea of *nolo contendere*, or of an offer so to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing withdrawn pleas or offers, is not admissible in any civil or criminal action, case or proceeding against the person who made the plea or offer.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussion has been introduced and the statement ought in fairness to be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

*Adopted effective Jan. 1, 1994; amended effective Jan. 1, 1994.*

**Rule 411. Liability Insurance**

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

*Adopted effective Jan. 1, 1994.*

**Rule 412. Evidence of Past Sexual Conduct**

(a) In a prosecution for a sex crime, evidence of the past sexual conduct of a victim or witness may not be admitted, except:

- (1) evidence of the victim's or of a witness's past sexual conduct with the defendant;
- (2) evidence which shows that some person other than the defendant committed the act upon which the prosecution is founded;
- (3) evidence that the victim's pregnancy at the time of trial was not caused by the defendant; or
- (4) evidence of conviction for a crime to impeach under Rule 609.

(b) If a party proposes to offer evidence under this rule, the following procedure must be followed:

- (1) A written motion must be filed at least ten days before trial describing the evidence. For good cause, a party may file such motion less than ten days before trial.
- (2) The court shall conduct a hearing and issue an order stating what evidence may be introduced and the nature of the questions to be permitted.

(c) If the state acknowledges that the victim's pregnancy is not due to the conduct of the defendant, the court may instruct the jury accordingly, in which case other evidence concerning the pregnancy may not be admitted.

*Adopted effective Jan. 1, 1994.*

**Rule 413. Medical Expenses**

Statements of charges for medical, hospital or other health care expenses for diagnosis or treatment occasioned by an injury are admissible into evidence. Such statements shall constitute prima facie evidence that the charges are reasonable.

*Adopted effective Jan. 1, 1994.*

## ARTICLE V. PRIVILEGES

### Rule

#### 501 Privileges

### Rule 501. Privileges

**(a) General Rule.** Except as provided by constitution or statute as enacted or interpreted by the courts of this State or by these or other rules promulgated by the Indiana Supreme Court or by principles of common law in light of reason and experience, no person has a privilege to:

- (1) refuse to be a witness;
- (2) refuse to disclose any matter;
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

**(b) Waiver of Privilege by Voluntary Disclosure.** A person with a privilege against disclosure waives the privilege if the person or person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

**(c) Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.** A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.

**(d) Comment Upon or Inference From Claim of Privilege; Instruction.** Except with respect to a claim of the privilege against self-incrimination in a civil case:

*(1) Comment or inference not permitted.* The claim of a privilege, whether in the present proceeding, or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn there from.

*(2) Claiming privilege without knowledge of jury.* In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

*(3) Jury instruction.* Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn there from.

*Adopted effective Jan. 1, 1994.*

## ARTICLE VI. WITNESSES

### Rule

- 601 General Rule of Competency
- 602 Lack of Personal Knowledge
- 603 Oath or Affirmation
- 604 Interpreters
- 605 Competency of Judge as Witness
- 606 Competency of Juror as Witness
- 607 Who May Impeach
- 608 Evidence of Character and Conduct of Witness
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- 612 Writing or Object Used to Refresh Memory

- 613 Prior Statements of Witnesses
- 614 Calling and Interrogation of Witnesses by Court and Jury
- 615 Separation of Witnesses
- 616 Bias of Witness

**Rule 601. General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in these rules or by act of the Indiana General Assembly.

*Adopted effective Jan. 1, 1994.*

**Rule 602. Lack of Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. A witness does not have personal knowledge as to a matter recalled or remembered, if the recall or remembrance occurs only during or after hypnosis. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

*Adopted effective Jan. 1, 1994.*

**Rule 603. Oath or Affirmation**

Before testifying, every witness shall swear or affirm to testify to the truth, the whole truth, and nothing but the truth. The mode of administering an oath or affirmation shall be such as is most consistent with, and binding upon the conscience of the person to whom the oath is administered.

*Adopted effective Jan. 1, 1994.*

**Rule 604. Interpreters**

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

*Adopted effective Jan. 1, 1994.*

**Rule 605. Competency of Judge as Witness**

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made to preserve the point.

*Adopted effective Jan. 1, 1994.*

**Rule 606. Competency of Juror as Witness**

**(a) At the Trial.** A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

**(b) Inquiry into Validity of Verdict or Indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify (1) to drug or alcohol use by any juror, (2) on the question of whether extraneous prejudicial information was improperly brought to the jury's attention or (3) whether any outside influence was improperly brought to bear upon any juror. A juror's affidavit or



evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

*Adopted effective Jan. 1, 1994.*

#### **Rule 607. Who May Impeach**

The credibility of a witness may be attacked by any party, including the party calling the witness.

*Adopted effective Jan. 1, 1994.*

#### **Rule 608. Evidence of Character and Conduct of Witness**

**(a) Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

**(b) Specific Instances of the Conduct of a Witness.** For the purpose of attacking or supporting the witness's credibility, other than conviction of a crime as provided in Rule 609, specific instances may not be inquired into or proven by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

*Adopted effective Jan. 1, 1994.*

#### **Rule 609. Impeachment by Evidence of Conviction of Crime**

**(a) General Rule.** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime or an attempt of a crime shall be admitted but only if the crime committed or attempted is (1) murder, treason, rape, robbery, kidnapping, burglary, arson, criminal confinement or perjury; or (2) a crime involving dishonesty or false statement.

**(b) Time Limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or, if the conviction resulted in confinement of the witness then the date of the release of the witness from the confinement unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

**(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

**(d) Juvenile Adjudications.** Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

**(e) Pendency of Appeal.** The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

*Adopted effective Jan. 1, 1994.*

**Rule 610. Religious Beliefs or Opinions**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that, by reason of their nature, the witness's credibility is impaired or enhanced.

*Adopted effective Jan. 1, 1994.*

**Rule 611. Mode and Order of Interrogations and Presentations**

**(a) Control by Court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

**(b) Scope of Cross-Examination.** Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

**(c) Leading Questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Ordinarily, leading questions should be permitted on cross-examination. Whenever a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

*Adopted effective Jan. 1, 1994.*

**Rule 612. Writing or Object Used to Refresh Memory**

**(a) While Testifying.** If, while testifying, a witness uses a writing or object to refresh the witness's memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

**(b) Before Testifying.** If, before testifying, a witness uses a writing or object to refresh the witness's memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

**(c) Terms and Conditions of Production and Use.** A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony, the court shall examine the writing or object *in camera*, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

*Adopted effective Jan. 1, 1994.*

**Rule 613. Prior Statements of Witnesses**

**(a) Examining Witness Concerning Prior Statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

**(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to statements of a party-opponent as defined in Rule 801(d)(2).

*Adopted effective Jan. 1, 1994.*

#### **Rule 614. Calling and Interrogation of Witnesses by Court and Jury**

**(a) Calling by Court.** The court may not call witnesses except in extraordinary circumstances or except as provided for court-appointed experts, and all parties are entitled to cross-examine witnesses thus called.

**(b) Interrogation by Court.** The court may interrogate witnesses, whether called by itself or by a party.

**(c) Objections.** Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

**(d) Interrogation by Juror.** A juror may be permitted to propound questions to a witness by submitting them in writing to the judge, who will decide whether to submit the questions to the witness for answer, subject to the objections of the parties, which may be made at the time or at the next available opportunity when the jury is not present. Once the court has ruled upon the appropriateness of the written questions, it must then rule upon the objections, if any, of the parties prior to submission of the questions to the witness.

*Adopted effective Jan. 1, 1994.*

#### **Rule 615. Separation of Witnesses**

At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of or discuss testimony with other witnesses, and it may make the order on its own motion. This rule does not authorize the exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

*Adopted effective Jan. 1, 1994.*

#### **Rule 616. Bias of Witness**

For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible.

*Adopted effective Jan. 1, 1994.*

### **ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

#### **Rule**

- 701 Opinion Testimony by Lay Witnesses
- 702 Testimony by Experts
- 703 Bases of Opinion Testimony by Experts
- 704 Opinion on Ultimate Issue
- 705 Disclosure of Facts of Data Underlying Expert Opinion

#### **Rule 701. Opinion Testimony by Lay Witnesses**

If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

*Adopted effective Jan. 1, 1994.*

#### **Rule 702. Testimony by Experts**

- (a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.
- (b) Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.

*Adopted effective Jan. 1, 1994.*

#### **Rule 703. Bases of Opinion Testimony by Experts**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field.

*Adopted effective Jan. 1, 1994.*

#### **Rule 704. Opinion on Ultimate Issue**

- (a) Testimony in the form of an opinion or inference otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact.
- (b) Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.

*Adopted effective Jan. 1, 1994.*

#### **Rule 705. Disclosure of Facts or Data Underlying Expert Opinion**

The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

*Adopted effective Jan. 1, 1994.*

### **ARTICLE VIII. HEARSAY**

- 801 Definitions
- 802 Hearsay Rule
- 803 Hearsay Exceptions: Availability of Declarant Immaterial
- 804 Hearsay Exceptions: Declarant Unavailable
- 805 Hearsay Within Hearsay
- 806 Attacking and Supporting Credibility of Declarant

### **Rule 801. Definitions**

The following definitions apply under this Article:

- (a) Statement.** A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant.** A "declarant" is a person who makes a statement.
- (c) Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) Statements Which are Not Hearsay.** A statement is not hearsay if:

- (1) Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition; or (B) consistent with the declarant's testimony, offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, and made before the motive to fabricate arose; or (C) one of identification of a person made shortly after perceiving the person; or
- (2) Statement by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or representative capacity; or (B) a statement of which the party has manifested an adoption or belief in its truth; or (C) a statement by a person authorized by the party to make a statement concerning the subject; or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

*Adopted effective Jan. 1, 1994; amended effective Jan. 1, 1994.*

### **Rule 802. Hearsay Rule**

Hearsay is not admissible except as provided by law or by these rules.

*Adopted effective Jan. 1, 1994.*

### **Rule 803. Hearsay Exceptions: Availability of Declarant Immaterial**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness.

- (1) Present Sense Impression.** A statement describing or explaining a material event, condition or transaction, made while the declarant was perceiving the event, condition or transaction, or immediately thereafter.
- (2) Excited Utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (3) Then Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it related to the execution, revocation, identification, or terms of declarant's will.
- (4) Statements for Purposes of Medical Diagnosis or Treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
- (5) Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

**(6) Records of Regularly Conducted Business Activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony or affidavit of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. The term "business" as used in this Rule includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

**(7) Absence of Entry in Records Kept in Accordance With the Provisions of Paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

**(8) Public Records and Reports.** Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form, of a public office or agency, setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (a) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case; (b) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (c) factual findings offered by the government in criminal cases; and (d) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

**(9) Records of Vital Statistics.** Records or data compilations in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

**(10) Absence of Public Record or Entry.** To prove the absence of a record, report, statement, or data compilation in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation in any form was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that a diligent search failed to disclose the record, report, statement, or data compilation, or entry.

**(11) Records of Religious Organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

**(12) Marriage, Baptismal, and Similar Certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

**(13) Family Records.** Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

**(14) Records of Documents Affecting an Interest in Property.** The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office.

**(15) Statements in Documents Affecting an Interest in Property.** A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purposes of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

**(16) Statements in Ancient Documents.** Statements in a document in existence thirty years or more, the authenticity of which is established.

**(17) Market Reports, Commercial Publications.** Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

**(18) Learned Treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises,

periodicals, or pamphlets that contradict the expert's testimony on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

**(19) Reputation Concerning Personal or Family History.** Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of a person's personal or family history.

**(20) Reputation Concerning Boundaries or General History.** Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

**(21) Reputation as to Character.** Reputation of a person's character among associates or in the community.

**(22) Judgment of Previous Conviction.** Evidence of a final judgment entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

**(23) Judgment as to Personal, Family, or General History, or Boundaries.** Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

*Adopted effective Jan. 1, 1994.*

#### **Rule 804. Hearsay Exceptions: Declarant Unavailable**

**(a) Definition of Unavailability.** "Unavailability as a witness" includes situations in which the declarant

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant's statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

**(b) Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

*(1) Former testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

*(2) Statement under belief of impending death.* A statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

*(3) Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable

person in the declarant's position would not have made the statement unless believing it to be true. A statement or confession offered against the accused in a criminal case, made by a codefendant or other person implicating both the declarant and the accused, is not within this exception.

*(4) Statement of personal or family history.* (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

*Adopted effective Jan. 1, 1994.*

#### **Rule 805. Hearsay Within Hearsay**

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

*Adopted effective Jan. 1, 1994.*

#### **Rule 806. Attacking and Supporting Credibility of Declarant**

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

*Adopted effective Jan. 1, 1994.*

### **ARTICLE IX. AUTHENTICATION AND IDENTIFICATION**

#### **Rule**

- 901 Requirement of Authentication or Identification
- 902 Self-Authentication
- 903 Subscribing Witness' Testimony Unnecessary

#### **Rule 901. Requirement of Authentication or Identification**

**(a) General Provision.** The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

**(b) Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

- (1) Testimony of witness with knowledge.* Testimony of a witness with knowledge that a matter is what it is claimed to be.
- (2) Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.
- (3) Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.
- (4) Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.



- (5) *Voice identification*. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
- (6) *Telephone conversations*. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (i) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (ii) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
- (7) *Public records or reports*. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.
- (8) *Ancient documents or data compilation*. Evidence that a document or data compilation, in any form, (i) is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 30 years or more at the time it is offered.
- (9) *Process or system*. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.
- (10) *Methods provided by statute or rule*. Any method or authentication or identification provided by the Supreme Court of this State or by a statute or as provided by the Constitution of this State.

*Adopted effective Jan. 1, 1994.*

**Rule 902. Self-Authentication**

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

- (1) *Domestic public documents*. The original or a duplicate of a domestic official record proved in the manner provided by Trial Rule 44(A)(1).
- (2) *Foreign public documents*. The original or a duplicate of a foreign official record proved in the manner provided by Trial Rule 44(A)(2).
- (3) *Official publications*. Books, pamphlets, or other publications issued by public authority.
- (4) *Newspapers and periodicals*. Printed materials purporting to be newspapers or periodicals.
- (5) *Trade inscriptions and the like*. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
- (6) *Acknowledged documents*. Original documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.
- (7) *Commercial paper and related documents*. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.
- (8) *Presumptions created by law*. Any signature, document, or other matter declared by any law of the United States or of this state, to be presumptively or prima facie genuine or authentic.
- (9) *Certified domestic records of regularly conducted activity*. Unless the source of information or the circumstances of preparation indicate lack of trustworthiness, the original or a duplicate of a domestic record of regularly conducted activity within the scope of Rule 803(6), which the custodian thereof or another qualified person certifies under oath (i) was made at or near the time of the occurrence of the matters set forth, by or from information transmitted by, a person with knowledge of those matters; (ii) is kept in the course of the regularly conducted activity, and (iii) was made by the regularly conducted activity as a regular practice. A record so certified is not self-authenticating under this subsection unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it.
- (10) *Certified foreign records of regularly conducted activity*. Unless the source of information or the circumstances of preparation indicate lack of trustworthiness, the original or a duplicate of a foreign record of regularly conducted activity within the scope of Rule 803(6), which is accompanied by a written declaration by the custodian thereof or another qualified person that the record (i) was made at or near the time of the occurrence of the matters set forth, by or from information transmitted by, a person with

knowledge of those matters; (ii) is kept in the course of the regularly conducted activity; and (iii) was made by the regularly conducted activity as a regular practice. The record must be signed in a foreign country in a manner which, if falsely made, would subject the maker to criminal penalty under the laws of that country, and the signature certified by a government official in the manner provided in Trial Rule 44(A)(2). The record is not self-authenticating under this subsection unless the proponent makes his or her intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it.

*Adopted effective Jan. 1, 1994.*

**Rule 903. Subscribing Witness' Testimony Unnecessary**

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

Adopted effective Jan. 1, 1994.

**ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS**

**Rule**

- 1001 Definitions
- 1002 Requirement of Original
- 1003 Admissibility of Duplicates
- 1004 Admissibility of Other Evidence of Contents
- 1005 Public Records
- 1006 Summaries
- 1007 Testimony or Written Admissions of Party
- 1008 Functions of Court and Jury

**Rule 1001. Definitions**

For purposes of this Article the following definitions are applicable:

- (1) Writings and recordings.** "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, Photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.
- (2) Photographs.** "Photographs" include still photographs, x-ray films, videotapes, and motion pictures.
- (3) Original.** An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately is an "original."
- (4) Duplicate.** A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by facsimile transmission, or video tape or by other equivalent techniques which accurately reproduces the original.

*Adopted effective Jan. 1, 1994.*

**Rule 1002. Requirement of Original**

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute. An electronic record of the Indiana Bureau of Motor Vehicles obtained from the Bureau that bears an electronic or digital signature, as defined by statute, is admissible in a court proceeding as if the signature were an original.

*Adopted effective Jan. 1, 1994.*

**Rule 1003. Admissibility of Duplicates**

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

*Adopted effective Jan. 1, 1994.*

**Rule 1004. Admissibility of Other Evidence of Contents**

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

- (1) **Originals lost or destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;
- (2) **Original not obtainable.** No original can be obtained by any available judicial process or procedure;
- (3) **Original in possession of opponent.** At a time when an original was under the control of the party against whom offered, such party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing; and such party does not produce the original at the hearing; or
- (4) **Collateral matters.** The writing, recording, or photograph is not closely related to a controlling issue.

*Adopted effective Jan. 1, 1994.*

**Rule 1005. Public Records**

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy complying with the foregoing cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.

*Adopted effective Jan. 1, 1994.*

**Rule 1006. Summaries**

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

*Adopted effective Jan. 1, 1994.*

**Rule 1007. Testimony or Written Admissions of Party**

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by a written admission, without accounting for the nonproduction of the original.

*Adopted effective Jan. 1, 1994.*

**Rule 1008. Functions of Court and Jury**

Whenever the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised whether (1) the asserted writing ever existed, or (2) another writing, recording, or photograph produced at the trial is the original, or (3) other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

*Adopted effective Jan. 1, 1994.*

## ARTICLE XI. MISCELLANEOUS RULES

### Rule

1101 Evidence Rules Review Committee

### **Rule 1101. Evidence Rules Review Committee**

A. The Supreme Court Committee on Rules of Practice and Procedure, as constituted under Ind. Trial Rule 80, shall serve as the Evidence Rules Review Committee.

B. The Evidence Rules Review Committee shall conduct a continuous study of the Indiana Rules of Evidence and shall submit to the Supreme Court from time to time recommendations and proposed amendment to such rules. The Committee shall follow the procedure set forth in Ind. Trial Rule 80(D) in the amendment of the Rules of Evidence. Amendments or additions may be suggested by the Supreme Court of Indiana in current case law or the Indiana General Assembly through enactment of legislation. Proposed amendments or comment on published amendments offered by the Bench, Bar, and Public, shall be delivered in writing to the Committee's Executive Secretary, 115 West Washington, Suite 1080, Indianapolis, Indiana 46204-3417.

*Adopted effective Jan. 1, 1994; amended Dec. 15, 1995, effective Feb. 1, 1996.*

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